

Fill in this information to identify your case:

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS**

Debtor 1 CYNTHIA ALLEN
 First Name Middle Name Last Name

Debtor 2
 (filing spouse) First Name Middle Name Last Name

Case Number: 17-40771

☐ Check if this modification is filed prior to filing of TRCC.

☐ Check if this modification is filed after TRCC filing but still within Benchmark Fee Period.

☒ Check if this modification is filed after Benchmark Fee Period.

List the sections which have been changed by this modification:

P 2, 1, 4 and 5,

TXEB Local Form 3015-d

**MOTION TO MODIFY
CONFIRMED CHAPTER 13 PLAN**

Adopted: Dec 2017

TO THE HONORABLE JUDGE OF THIS COURT:

1. This Motion to Modify Previously-Confirmed Chapter 13 Plan (the "Modification Motion") is filed by the:

☒ Debtor;¹

☐ Chapter 13 Trustee;

☐ Unsecured Claimant: _____

for the purpose of modifying certain specified provisions of that Chapter 13 Plan which had previously been confirmed for the Debtor on DATE [dkt #xx]. Except as modified herein, all provisions of the confirmed Chapter 13 Plan remain in full force and effect.

If this Motion is filed by the Debtor, each Debtor:

☒ certifies that an amended Schedule I and Schedule J have been filed contemporaneously with this motion;

☐ declares, under penalty of perjury, that the information contained in Schedule I and Schedule J, as previously filed with the Court, remains true and correct.

28-DAY NEGATIVE NOTICE – LBR 3015(h):

Your rights may be affected by the plan modifications sought in this pleading. You should read this pleading carefully and discuss it with your attorney, if you have one in this bankruptcy case. If you oppose the relief sought by this pleading, you must file a written objection, explaining the factual and/or legal basis for opposing the relief.

No hearing will be conducted on this Motion unless a written objection is filed with the Clerk of the United States Bankruptcy Court and served upon the party filing this pleading WITHIN TWENTY-EIGHT (28) DAYS FROM DATE OF SERVICE shown in the certificate of service unless the Court shortens or extends the time for filing such objection. If no objection is timely served and filed, this pleading shall be deemed to be unopposed, and the Court may enter an order confirming this plan modification. If an objection is filed and served in a timely manner, the court will thereafter set a hearing with appropriate notice. If you fail to appear at the hearing, your objection may be stricken. The Court reserves the right to set a hearing on any matter.

¹ The use of the singular term "Debtor" in this Modification Motion includes both debtors when the case has been initiated by the filing of a joint petition by spouses.

2. This Modification Motion is required *[select all applicable]*:

- ☐ to reconcile the Plan with allowed claims pursuant to the TRCC;
- ☐ to increase the amount of payments required under the Plan;
- ☐ to reduce the amount of payments required under the Plan;
- ☐ to provide for an allowed claim omitted from treatment under the Plan;
- ☒ to extend the time for making payments required under the Plan;
- ☐ to reduce the time for making payments required under the Plan;
- ☐ to surrender collateral pursuant to § 3.6;
- ☐ to cease further plan disbursements to a particular claimant;
- ☒ to cure a delinquency in the plan payments caused by husband's brain injury
- ☐ to increase the amount of retained income tax refunds authorized under § 2.4;

Reason: _____;

- ☒ to seek approval of an additional award of attorney's fees to the Debtor's attorney;

☒ Other: _____

- ☐ to add a nonstandard provision to Part 8 of the Plan *[check box below]*;

3. Notice to Creditors: Regarding insertion of new Nonstandard Provision into Debtor's Plan:

Nonstandard provisions as set forth in Part 8.	<input type="checkbox"/> Included	<input checked="" type="checkbox"/> Not included
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4. The specific modifications to the Debtor's Plan are as follows:

- ☒ § 2.2 of the Plan regarding regular plan payments² is **MODIFIED** in the following respects:

Beginning on the 30th day after the Petition Date³ unless the Court orders otherwise, the Debtor will make regular payments to the Trustee in variable amounts throughout the applicable commitment period and for such additional time as may be necessary to make the payments to claimants specified in Parts 3 through 5 of this Plan (the "Plan Term"). The payment schedule shall consist of:

☐ **Constant Payments:** The Debtor will pay \$ _____ per month for _____ months.

☒ **Variable Payments:** The Debtor will pay make variable plan payments throughout the Plan Term. The proposed schedule for such variable payments are set forth in **Exhibit A** to this Order and are incorporated herein for all purposes.

If plan payment amounts are increasing, the Debtor certifies that, with regard to § 2.3 of the Plan,

- ☐ a Motion for an Amended Wage Withholding Order for the increased payment amount has been filed;
- ☐ an increase of the amount to be transferred to the Trustee by electronic means has been authorized.

² Any reference to § 2.2 of the Plan herein includes any payments designated and confirmed under ¶ 2 of the 2006 version of TXEB Local Form 3015-a.

³ The use of the term "Petition Date" in this Plan refers to the date that the Debtor filed the voluntary petition in this case.

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☒ None. No additional Cure Claims designated for treatment under § 3.2 of the Plan.⁴

☒ None. No additional 910 Claims designated for treatment under § 3.3 of the Plan.⁵

☒ None. No additional 506 Claims designated for treatment under § 3.4 of the Plan.⁶

☒ None. No additional Direct Claims designated for treatment under § 3.5 of the Plan.⁷

☒ None. No additional designations for surrender of collateral under § 3.6 of the Plan.⁸

☒ None. No additional DSO Claims designated for treatment under § 4.4 of the Plan.⁹

☒ None. No additional Tax/Other Priority Claims designated for treatment under § 4.6 of the Plan.¹⁰

5. Request for Additional Attorney's Fees (Expiration of Benchmark Fee Period Only):

In light of the fact that the Benchmark Fee Period under LBR 2016(h) expired prior to the filing of this motion, the Debtor's attorney, Michael Wiss & Associates requests an additional award of \$ 1,700.00 to be paid pursuant to § 4.3 of the confirmed Plan for legal services rendered and for reimbursement of expenses incurred with regard to the preparation and filing of this Modification Motion and other documents pertaining thereto. This award would be in addition to any other fees previously awarded or paid in this case and shall be paid in a manner consistent with § 9.2 of the confirmed Plan.

* Note: The above additional attorney fees include this and the prior modification (a new fee application necessary due to the brain injury sustained by the non-debtor spouse) and the Motion to Vacate the Dismissal order and hearing on same on August 28, 2019, as well as all communication associated with same. To the extent a fee application is necessary and not filed within thirty (30) days from the approval of this modification, fees shall be awarded under the standard * Note: The above additional attorney fees include this and the prior modification (a new modification necessary due to the brain injury sustained by the non-debtor spouse) and the motion to vacate dismissal order and hearing on same non-fee application fees award in this case.

⁴ Any reference to § 3.2 of the Plan herein includes any payments designated and confirmed under ¶ 6(B) or ¶ 8 of the 2006 version of TXEB Local Form 3015-a.

⁵ Any reference to § 3.3 of the Plan herein includes any payments designated and confirmed under ¶ 6(A)(ii)(a) of the 2006 version of TXEB Local Form 3015-a.

⁶ Any reference to § 3.4 of the Plan herein includes any payments designated and confirmed under ¶ 6(A)(ii)(b) of the 2006 version of TXEB Local Form 3015-a.

⁷ Any reference to § 3.5 of the Plan herein includes any payments designated and confirmed under ¶ 12(B) of the 2006 version of TXEB Local Form 3015-a.

⁸ Any reference to § 3.6 of the Plan herein includes any designations for surrender of collateral under ¶ 6(C) of the 2006 version of TXEB Local Form 3015-a.

⁹ Any reference to § 4.4 of the Plan herein includes any payments designated and confirmed under ¶ 5(A) of the 2006 version of TXEB Local Form 3015-a.

¹⁰ Any reference to § 4.6 of the Plan herein includes any payments designated and confirmed under ¶ 5(B) of the 2006 version of TXEB Local Form 3015-a.

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WHEREFORE, the Movant, as identified in ¶ 1 herein, respectfully prays that the foregoing Modification Motion be granted, that the Debtor's Plan be modified in the manner set forth herein, that, if applicable, any request for additional attorney's fees as set forth in ¶5 be granted, and that such other and further relief be granted in this regard as may be appropriate under the circumstances.

Respectfully submitted,

/s/ Michael Wiss

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ATTORNEY FOR DEBTOR(S)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing motion/modification has been served on or before 09/18/2019, via the court's electronic filing system, facsimile, or first class mail to the US Trustee, US Attorney, the Chapter 13 Trustee and all creditors per the attached service list.

/s/ Michael Wiss

Michael Wiss

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

IN RE: **Cynthia Allen**CASE NO **17-40771-BTR***Debtor(s)*CHAPTER **13****EXHIBIT "A" - VARIABLE PLAN PAYMENTS****PROPOSED PLAN OF REPAYMENT (VARIABLE PAYMENTS INTO THE PLAN)**

<u>Month / Due Date</u>	<u>Payment</u>	<u>Month / Due Date</u>	<u>Payment</u>	<u>Month / Due Date</u>	<u>Payment</u>
1 05/11/2017	\$3,558.21	21 01/11/2019	\$3,558.21	41 09/11/2020	\$210.00
2 06/11/2017	\$3,558.21	22 02/11/2019	\$3,558.21	42 10/11/2020	\$2,100.00
3 07/11/2017	\$3,558.21	23 03/11/2019	\$3,558.21	43 11/11/2020	\$2,100.00
4 08/11/2017	\$3,558.21	24 04/11/2019	\$3,558.21	44 12/11/2020	\$2,100.00
5 09/11/2017	\$3,558.21	25 05/11/2019	\$3,558.21	45 01/11/2021	\$2,100.00
6 10/11/2017	\$3,558.21	26 06/11/2019	\$3,558.21	46 02/11/2021	\$2,100.00
7 11/11/2017	\$3,558.21	27 07/11/2019	\$3,558.21	47 03/11/2021	\$2,100.00
8 12/11/2017	\$3,558.21	28 08/11/2019	\$3,558.21	48 04/11/2021	\$2,100.00
9 01/11/2018	\$3,558.21	29 09/11/2019	\$2,100.00	49 05/11/2021	\$2,100.00
10 02/11/2018	\$3,558.21	30 10/11/2019	\$2,100.00	50 06/11/2021	\$2,100.00
11 03/11/2018	\$3,558.21	31 11/11/2019	\$2,100.00	51 07/11/2021	\$2,100.00
12 04/11/2018	\$3,558.21	32 12/11/2019	\$2,100.00	52 08/11/2021	\$2,100.00
13 05/11/2018	\$3,558.21	33 01/11/2020	\$2,100.00	53 09/11/2021	\$2,100.00
14 06/11/2018	\$3,558.21	34 02/11/2020	\$2,100.00	54 10/11/2021	\$2,100.00
15 07/11/2018	\$3,558.21	35 03/11/2020	\$2,100.00	55 11/11/2021	\$2,100.00
16 08/11/2018	\$3,558.21	36 04/11/2020	\$196,840.00	56 12/11/2021	\$2,100.00
17 09/11/2018	\$3,558.21	37 05/11/2020	\$2,100.00	57 01/11/2022	\$2,100.00
18 10/11/2018	\$3,558.21	38 06/11/2020	\$2,100.00	58 02/11/2022	\$2,100.00
19 11/11/2018	\$3,558.21	39 07/11/2020	\$2,100.00	59 03/11/2022	\$2,100.00
20 12/11/2018	\$3,558.21	40 08/11/2020	\$2,100.00	60 04/11/2022	\$2,100.00